



Before the  
Surface Transportation Board  
Washington, D.C.

**PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS**  
**Ex Parte No. 582**

**Statement of United States Secretary of Transportation Rodney Slater**

**March 7, 2000**

Madam Chair, Vice Chair Burkes and Commisioner Clyburn. I want to commend the Surface Transportation Board for holding this hearing. We at the U.S. Department of Transportation wholeheartedly agree that it is the proper course for the Board to take the opportunity at this time to hear from the stakeholders and to deliberate about where our national transportation system, and the integral role of the rail industry in relation to it, is headed as we move into the 21<sup>st</sup> century, and the new millennium. We believe that you can only deal effectively with present day transportation proposals and issues if you have a clear idea of where you want to be in the future. We recommend that the Board use these deliberations to refine your view of rail consolidations. Such an approach will enable the U.S. to maintain a railroad system that is safe, competitive, and profitably able to meet the needs of customers and communities working together with, and not at the expense of, its employees.

To give us a keener insight into the transportation challenges and opportunities we will encounter in the years ahead, the U.S. Department of Transportation is now developing, with the assistance of the transportation industry and our partners across government, a "2025 Trends and Choices Report." The report will aid us in formulating a new policy architecture for transportation decision-making in the new century and the new millennium. This new transportation policy architecture will, in turn, guide the Department and our public and private sector partners on a daily, project-by-project basis in developing the transportation system of our dreams.

Safety and sustainability surely must be the foundation of our 21<sup>st</sup> century transportation system, but we at the Department of Transportation believe that the system of the future also must be international in reach, intermodal in form, intelligent in character and inclusive in service.

International in reach, connecting us to markets and destinations around the world.

Intermodal in form, enabling us to benefit from the collective

strength of our individual modes of transportation as they work together in a seamless fashion as one dynamic transportation system.

Intelligent in character, allowing us to harness the awesome power of technology and to combine it with the concrete, asphalt and steel of our system as we know it today, to increase its safety, speed, efficiency, accessibility and convenience -- in short, increasing the system's capacity and capability.

And, inclusive in service, ensuring that all will have access to work, school, loved ones, nature's rich bounty and God's untold blessings.

To be sure, adequate resources, an ever visionary and vigilant work force, and a climate of transportation innovation are essential to bringing this type of 21<sup>st</sup> century transportation system into being. Additionally, it is our sincere belief that rail transportation, both passenger and freight, is critical to and an essential part of a transportation system of the 21<sup>st</sup> century and the new millennium.

We at DOT have worked tirelessly and in a visionary and vigilant manner to redefine transportation beyond the narrow public works definition of concrete, asphalt and steel to acknowledge our top

priority **is safety** -- while demonstrating transportation's ability to improve mobility, enhance the human and natural environment, spur economic development and trade, and ensure our national security. These guiding principles (safety, mobility, the human and natural environment, economic development and trade, and national security) are reflected as the strategic goals in our best-in-government strategic and performance plans.

Moreover, the issues raised in this proceeding touch every one of the five strategic goals as we look toward the future of our transportation enterprise in this global economy.

There is no question, to state the obvious, that railroads are a critical part of our current transportation system, and we submit they must be an integral part of the transportation system of the future. Railroads are not only a strong element in domestic transportation. They link us with Canada and Mexico, our partners in NAFTA. Additionally, railroads link the U.S. to the rest of the world through our ports on our coasts, the St. Lawrence Seaway and the Great

Lakes, the mighty Mississippi and other rivers and tributaries. And lastly, the United States leads the world in the effectiveness of rail freight transportation. In this context, we at the DOT are hopeful that the rail industry will play a key role in the International Transportation Symposium to be held this fall in our Nation's Capital.

The **importance** of the rail industry and rail infrastructure is not new. The **nature** of the industry, however, is different today than it was even 20 years ago. Virtually prohibitive entry barriers have long been a fact of life. But the high degree of concentration in the Class I rail sector and the possibility that this will soon increase, compel the Board and all other interested parties to rethink the criteria by which rail consolidations are judged so as to ensure that the public interest continues to be protected and enhanced. The Board must decide if the way in which mergers are approved will result in a financially viable rail industry that is more responsive to the needs of its customers, and is more intermodal in form than the industry today.

The Department has submitted extensive written comments in this proceeding, but I want to highlight and emphasize several important

points.

First, a safe and viable national transportation system remains the primary consideration of DOT, regardless of the particulars of any transaction. Through the Federal Railroad Administration (FRA), under the leadership of Administrator Molitoris, we plan to work closely with rail management, labor, and other interested parties to ensure the preparation and proper execution of appropriate Safety Integration Plans (SIP) in every case. As the industry is well aware, the SIP process evolved through a partnership between the Board, the Federal Railroad Administration and the Department, as we addressed key issues in prior mergers before the body. The SIP process has worked because FRA determined, and the Board agreed, that ever-larger mergers risked ever-larger safety and service implementation problems, and that these issues must be addressed in advance to avoid serious consequences throughout the transportation network.

I also want to make it clear that the Department expresses no

view at this time on the merits of any specific transaction. There is not yet an application on file from the Burlington Northern Santa Fe and Canadian National (Burlington Northern/Canadian National or BN/CN). In the event an application is filed, the DOT will examine it carefully, along with the responses of other parties, before taking a position. It is clear, however, that the announcement of the Burlington Northern/Canadian National combination has generated a great deal of speculation about a new round of consolidations in the rail industry. We at the Department know from our experiences with the maritime and aviation sectors that mergers may not be the only answer, and that consolidations and alliances can take many forms. But whether we are now approaching an "end game" in which there are only two or three railroads in this country -- or this continent -- is a valid and extraordinarily important question. This result *could* be a "downstream" consequence of the BN/CN transaction. It *need* not be; though the implications and uncertainties of such an end game create a risk that we should not take without first considering whether that is the direction in which we should head.

Here we hasten to note that we do not believe a moratorium on mergers is the right response. Nor do we believe, however, that the BN/CN proposal, if and when it is placed before the Board, should be reviewed under the existing, relatively narrow, public interest standard. Starting now, we, the DOT, respectfully submit that the Board should examine every major rail consolidation from the perspective of both long-term and short-term consequences first on the rail industry itself, and the industry's role in the broader context of the national transportation system of the 21<sup>st</sup> century and the new millennium.

The short-term implications, in DOT's view, include implementation of each Safety Integration Plan and resolution of any post-merger service difficulties. I have already mentioned the attention the Department intends to give to SIPs and their implementation. On the question of service, the severe disruptions that have accompanied recent consolidations in both the east and west clearly show that carriers must do much more to produce the improvements promised routinely in merger applications.

It is the Department's reasoned judgment that the Board should



require from each railroad that appears as an applicant: (1) a thorough examination of its post-merger service experience; (2) an analysis of any potential service disruptions, their causes and their proposed resolutions; and (3) a comprehensive plan to avoid such problems following any approval it may receive. The scale of magnitude involved in each potential consolidation now and in the future is unprecedented by any measure. So, too, would be the consequences, for good or ill. Finally, as to the short-term implications of future mergers, carriers who have not yet fixed the problems of their past consolidations should not be allowed to compound them.

The long-term implications of these transactions are those that will last indefinitely. With a nationwide or even continent-wide scope a part of each case, the Surface Transportation Board must consider more carefully than before the issues of competition, and environmental and community impacts. The public interest in the long-term future of rail passenger service also requires the Board to protect the legitimate interests of Amtrak and commuter service. The Department also strongly urges that the Board not use its authority to

override existing collective bargaining agreements -- the so-called cram down authority -- as a shortcut in the complex task of integrating labor forces in a consolidation.

We believe it also important to be mindful that sheer size poses unique questions and risks. For example, carrier financial viability is no longer an abstract or isolated commercial matter to be monitored and remedied by traditional means. It is instead a critical necessity for the health of our national transportation system, including highways, ports, and waterways. Railroads have collectively always been a crucial component of the U.S. transportation infrastructure. In a world of only two or three railroads, each one would be a crucial national component. There is no margin for error.

We also see a paradox today in that larger railroads, experiencing management problems related to their perhaps unwieldy size, are decentralizing operations. The larger railroads are, in effect, looking for ways to operate with the flexibility and scope of smaller carriers. At the same time, however, we are told that the march toward an

“end game” of only two railroads may be inexorable. We do not know if this is true, but we *do* know that we cannot afford to ultimately find ourselves with two or three railroads that are too big to manage and too big to be allowed to fail.

Risk of this magnitude requires caution. We think that any future transaction that presents such a level of risks can only be deemed “consistent with the public interest” if quantifiable public benefits offset those risks. Thus, careful assessment and balancing of the risks and public benefits should be at the core of the Board’s decisions in future cases.

In the Department’s written statement in this docket, we tried to set out in more detail the types of issues with which all should be now concerned in rail consolidation proceedings. The list, even if expansive, is hardly exhaustive. At the very least, railroads resulting from new consolidations should be safe, competitive and profitable, and able to meet the needs of customers and communities. The Board needs to closely monitor the railroad industry to consider all

legitimate “downstream” concerns and to be open to both innovative criteria and conditions.

We at DOT have tried not only to raise questions, but also to offer you the best recommendations and answers that we now have. Many of the answers to fundamental questions about our future national transportation enterprise must come from proceedings similar to this one, from individual merger cases (where the Board's view is not confined solely to the application at hand and is open to the long-term implications) and from initiatives such as the DOT's 2025 Trends and Choices Report.

The railroads helped this country grow and prosper in the 19<sup>th</sup> and 20<sup>th</sup> centuries. As we move into a new century and a new millennium, all of us here, and especially the railroads themselves, must work to ensure a safe, competitive and profitable private sector rail industry. Finally, such an industry must be committed to serving the needs of customers and communities working together with, and not at the expense of, rail employees. We have been afforded a unique and historic opportunity to

address these critically important issues in this, the first year of a new century and a new millennium. Guided by a tested new transportation policy architecture, we can and we will build the transportation system of our dreams.